

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CHARLES KELLY CHAVAZ,

Petitioner,

v.

ISIDRO BACA, et al.,

Respondents.

Case No. 3:13-cv-0059-MMD-VPC

ORDER

This closed action is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a Nevada state prisoner. By order filed February 8, 2013, the Court dismissed this action, without prejudice, as successive pursuant to 28 U.S.C. § 2244(3)(A). (Dkt. no. 3.) The Court's order noted that petitioner had not presented this Court with proof that he had obtained leave to file a successive petition from the Ninth Circuit Court of Appeals. (*Id.*, at p. 2).

On February 13, 2013, petitioner filed with this Court a motion for leave to file a second or successive petition, which is captioned for the Ninth Circuit Court of Appeals. (Dkt. no. 5.) This district court does not have discretion to consider a successive petition erroneously filed without having obtained the court of appeals' authorization. 28 U.S.C. § 2244(3)(A); see *U.S. v. Gallegos*, 142 F.3d 1211, 1212 (10th Cir. 1998) (per curium). To the extent petitioner seeks permission to file a second or successive petition, he shall file such request with the Ninth Circuit Court of Appeals, not this Court. As such, petitioner's motion for permission to file a second or successive petition is denied by this

1 Court, without prejudice to petitioner seeking such permission from the Ninth Circuit
2 Court of Appeals.

3 Petitioner has also filed a motion for the appointment of counsel. (Dkt. no. 6.)
4 There is no constitutional right to appointed counsel for a federal habeas corpus
5 proceeding. *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999
6 F.2d 425, 428 (9th Cir. 1993). The decision to appoint counsel is generally
7 discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986), *cert. denied*, 481
8 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert. denied*, 469
9 U.S. 838 (1984). Given that this case has been dismissed as a successive petition, the
10 motion for appointment of counsel is denied. Further, petitioner has demonstrated that
11 he is capable of submitting a petition, and a request for permission to file a successive
12 petition, without the assistance of counsel.

13 IT IS THEREFORE ORDERED that petitioner's motion for permission to file a
14 second or successive petition (dkt. no. 5) is DENIED, without prejudice to petitioner
15 seeking such permission from the Ninth Circuit Court of Appeals.

16 IT IS FURTHER ORDERED that petitioner's motion for the appointment of
17 counsel (dkt. no. 6) is DENIED.

18 DATED THIS 16th day of August 2013.

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22 MIRANDA M. DU
23 UNITED STATES DISTRICT JUDGE
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